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**IN THE
COURT OF APPEALS OF INDIANA**

DAVY KEEN,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0610-CR-595
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Scott Devries, Commissioner
Cause No. 49F09-0510-CM-183420

(Handdown date)

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Davy Keen appeals his convictions for Public Intoxication,¹ a class B misdemeanor, and Resisting Law Enforcement,² a class A misdemeanor. Specifically, Keen argues that there was insufficient evidence to support each of his convictions. Concluding that the evidence was sufficient, we affirm the judgment of the trial court.

FACTS

At or around 3:00 a.m. on October 22, 2005, Keen was “jumped” by approximately ten people in the 1700 block of Gimber Street on the southeast side on Indianapolis. Tr. p. 49. Indianapolis Police Department Deputy Chad Dailey arrived at the scene and found Keen and an unidentified woman sitting on the sidewalk. Both individuals had sustained minor injuries in the fight. Deputy Dailey concluded that Keen was intoxicated because he smelled of alcohol, had slurred speech, and was “swaying back and forth.” Id. at 8, 11. After a medical unit arrived and examined Keen, Deputy Dailey “went ahead and [] released Mr. Keen so [that he] could deal with the [woman]” because he knew that Keen lived “three (3) or (4) blocks away.” Id. at 9, 16.

Seven minutes later, Deputy Dailey was dispatched to Keen’s residence after a report that there had been a disturbance. Upon his arrival, Deputy Dailey observed Keen “in [his] yard . . . up near his side door” and did not observe anyone else.³ Id. at 9-10. As Keen

¹ Ind. Code § 7.1-5-1-3.

² Ind. Code § 35-44-3-3.

³ Keen testified that he was outside because he had just finished smoking a cigarette and that he was attempting to light another cigarette when Deputy Dailey arrived. At trial, Deputy Dailey admitted that upon arriving at Keen’s residence the deputy “had already made the decision that something had to be done . . . [and he] knew [Keen] was going to go to jail for public intoxication.” Id. at 17.

walked towards the side door of the residence, Deputy Dailey entered the yard and stated, “Come over here so [I can] see what [is] going on.” Id. at 10, 14. Keen turned away from his house and walked to a vehicle parked in his driveway. At that point, Deputy Dailey leaned Keen over the hood of the vehicle and attempted to handcuff him but “[Keen] jerked . . . his arm in an arching motion so that his arm went straight above his head and then butted [Deputy Dailey] with his right hip.” Id. at 10.

On October 22, 2005, the State charged Keen with class B misdemeanor public intoxication and class A misdemeanor resisting law enforcement. A bench trial was held on September 20, 2006, and Keen did not object to Deputy Dailey’s testimony about the arrest. The trial court found Keen guilty as charged, and Keen was sentenced to four months imprisonment for the public intoxication conviction and one year imprisonment with eight months suspended to probation for the resisting law enforcement conviction. The sentences were ordered to run concurrently, for an executed sentence of four months imprisonment. Keen now appeals.

DISCUSSION AND DECISION

I. Public Intoxication Conviction

Keen argues that his public intoxication conviction cannot stand because his arrest was unlawful. Specifically, Keen argues that the arrest was unlawful because Deputy Dailey chose not to arrest him while he was publicly intoxicated yet later arrested him for public intoxication on his private property. To support his argument, Keen notes that it is well established in Indiana that a private residence, including the private grounds directly outside

the residence, is not a public place within the meaning of the public intoxication statute. Price v. State, 600 N.E.2d 103, 116 (Ind. Ct. App. 1992), summarily aff'd by Price v. State, 622 N.E.2d 954, 967 (Ind. 1993); Moore v. State, 634 N.E.2d 825, 827 (Ind. Ct. App. 1994) (holding that a man only observed in the driveway and backyard of a private residence could not be convicted of public intoxication).

In response, the State argues that Keen was properly arrested and convicted of public intoxication because, prior to the arrest, Deputy Dailey had observed Keen intoxicated in a public place. The State notes that the charging information charges Keen with being publicly intoxicated at “1700 Gimber”—the location of the original public fight—not at Keen’s residence. Appellant’s App. p. 21. The State argues that the evidence shows that Deputy Dailey observed Keen intoxicated in a public place and that Keen cites “no authority or persuasive legal reasoning to support his claim that if a deputy shows leniency, [he] is bound by that earlier decision.” Appellee’s Br. p. 5.

Even if we assume for the sake of the argument that Keen’s arrest was unlawful,⁴ “[a]n invalid arrest does not affect the right of the State to try a case nor does it affect the

⁴ Keen’s arrest may have been unlawful pursuant to Indiana Code section 35-33-1-1(a)(4), which provides, in relevant part, that a law enforcement officer may perform a warrantless arrest if the officer has “probable cause to believe the person is committing or attempting to commit a misdemeanor in the officer’s presence.” (Emphases added to highlight present and future tenses of the verbs). While case law does not address whether a person must be committing the misdemeanor at the time the officer makes the warrantless arrest, we note that, unlike the misdemeanor provision, the felony provision of the statute utilizes the past, present, and future tenses when listing the circumstances under which the officer can perform a warrantless felony arrest. I.C. § 35-33-1-1(a)(2) (“probable cause to believe the person has committed or attempted to commit, or is committing or attempting to commit, a felony”) (emphasis added).

Here, no evidence was presented that Deputy Dailey had probable cause to believe that Keen had committed a felony and, as Keen notes, he was not committing a misdemeanor at the time Deputy Dailey arrested him because he was intoxicated on private property. Price, 600 N.E.2d at 116. However, it is unnecessary for us

judgment of conviction.” Pond v. State, 808 N.E.2d 718, 721 (Ind. Ct. App. 2004) (citing Flowers v. State, 738 N.E.2d 1051, 1055 (Ind. 2000)). “The legality or illegality of an arrest is pertinent only as it affects the admission of evidence obtained through a search incident to arrest and has no bearing upon one’s guilt or innocence.” Pond, 808 N.E.2d at 721. Because no evidence was admitted at trial that was obtained as a result of the invalid arrest, Keen’s conviction can be sustained as long as the State presented sufficient evidence of his guilt. Felders v. State, 516 N.E.2d 1, 2 (Ind. 1987).

The standard of review for sufficiency claims is well settled. In addressing Keen’s challenge we neither reweigh the evidence nor reassess the credibility of witnesses. Sanders v. State, 704 N.E.2d 119, 123 (Ind. 1999). Instead, we consider the evidence most favorable to the verdict and draw all reasonable inferences supporting the ruling below. Id. We affirm the conviction if there is probative evidence from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. O’Connell v. State, 742 N.E.2d 943, 949 (Ind. 2001). A conviction may be sustained wholly on circumstantial evidence if such evidence supports a reasonable inference of guilt. Maul v. State, 731 N.E.2d 438, 439 (Ind. 2000).

Deputy Dailey testified at trial that he had contact with Keen on a public street at 1700 Gimber Street after he responded to a report that there had been a ten-person fight in that area. Deputy Dailey concluded that Keen was intoxicated because he smelled of alcohol, had

to determine the legality of Keen’s arrest pursuant to Indiana Code section 35-33-1-1 because, as explained herein, both of Keen’s convictions are proper notwithstanding the legality of the arrest.

slurred speech, and was “swaying back and forth.” Tr. p. 8, 11. Keen testified that he had drunk “three-fourths of a fifth” of brandy before encountering Deputy Dailey that night. Id. at 57. In light of this evidence, we conclude that sufficient evidence was presented at trial to sustain Keen’s conviction for class B misdemeanor public intoxication.

II. Resisting Law Enforcement Conviction

Keen’s sole argument⁵ regarding the resisting law enforcement conviction is that there “is no evidence that the movement that Mr. Keen is alleged to have done, while being handcuffed, was an exercise of force or in any way obstructed or interfered with the officer’s arrest of Mr. Keen.” Appellant’s Br. p. 8. Specifically, Keen argues that Deputy Dailey’s testimony to the contrary conflicts with other eyewitness testimony.

To sustain a conviction for class A misdemeanor resisting law enforcement, the State had to prove beyond a reasonable doubt that Keen knowingly or intentionally forcibly resisted, obstructed, or interfered with Deputy Dailey while the officer was lawfully engaged in the execution of his duties. I.C. § 35-44-3-3; Appellant’s App. p. 20. “One forcibly resists law enforcement when strong, powerful, violent means are used to evade a law enforcement official’s rightful exercise of his or her duties.” Spangler v. State, 607 N.E.2d 720, 723 (Ind. 1993). In Spangler, the evidence did not establish that the defendant acted with force because he did not direct any strength, power, or violence toward the police officer or make any movement or threatening gesture in the direction of the officer. Id. at 724-25.

⁵ Keen does not extend his previous argument regarding the legality of the arrest to his challenge of the resisting law enforcement conviction. Therefore, he has waived any argument that he may have had regarding a right to resist an unlawful arrest on his property by not developing the argument or citing relevant legal authority. Ind. Appellate Rule 46.

Keen's argument is that the movements he made while Deputy Dailey was arresting him did not amount to the force necessary to support a resisting law enforcement conviction. At trial, Deputy Dailey testified that when he attempted to handcuff Keen, "[Keen] jerked . . . his arm in an arching motion so that his arm went straight above his head and then butted [Deputy Dailey] with his right hip." Tr. p. 10. Keen's arm motion and hip butt against Deputy Dailey were sufficient to establish that Keen acted with force toward Deputy Dailey to obstruct the arrest. While Keen directs us to his mother's testimony that she did not see Keen resist the arrest, Keen's mother also admitted that her view was hindered by Deputy Dailey's body and that she "could not see [Keen's] arms when they were being handcuffed." Id. at 33. Keen's argument is an invitation for us to reweigh the evidence presented at trial—an invitation that we decline because we do not assess the credibility of witnesses or reweigh the evidence in a sufficiency challenge on appeal. Therefore, Keen's argument fails.

The judgment of the trial court is affirmed.